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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEOBARDO MEDINA ORTIZ

Petitioner

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; et al.,

Case No.:25-cv-2819-DMS-MMP

Judge: Hon. Dana M. Sabraw

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

INTRODUCTION

Petitioner, Leobardo Medina-Ortiz, respectfully submits this Traverse in response to Respondents' Return. Petitioner challenges the Department of Homeland Security's continued detention under INA § 235(b) rather than § 236(a), asserting that such classification exceeds statutory authority and violates the Due Process Clause of the Fifth Amendment.

Respondents' Return fails to demonstrate that DHS correctly identified the statutory authority governing Petitioner's custody, despite the undisputed fact that he was arrested within the interior of the United States, long after his entry. Although DHS had already asserted that Petitioner was detained under INA § 235(b) and later invoked *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), to reinforce that position, an Immigration Judge had already found that Petitioner's custody fell under INA § 236(a) and granted release on a $1,500 bond.

As in other recent decisions in this District—such as *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025), and *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025)*—the record confirms that DHS has again invoked § 235(b) detention authority against a long-settled resident arrested in the interior, contrary to law and established precedent. Petitioner's ongoing confinement under an automatic stay pending DHS's appeal serves no legitimate purpose and perpetuates unlawful detention under an inapplicable statutory scheme.

Because DHS's misclassification of custody under § 235(b) is contrary to law—and the Immigration Judge already granted release under § 236(a)—Petitioner respectfully requests that this Court grant the writ of habeas corpus, lift the automatic stay, and order his immediate release pursuant to the bond previously set, or, in the alternative, direct DHS to provide a new individualized bond hearing consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

JURISDICTION

A. 8 U.S.C. § 1252(b)(9): Does Not Bar Habeas Review of Collateral Custody Challenges

Respondents contend that this Court lacks jurisdiction because Petitioner's custody "arises from" removal proceedings and therefore falls within § 1252(b)(9). That argument fails.

Throughout their Return, Respondents rely extensively on *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025). The *Chavez* court expressly held that § 1252(b)(9) poses no jurisdictional bar to challenges contesting the legal basis of detention. As Chavez further explained, 'detention pursuant to § 1225(b)(2) may occur during—but remains independent of—the removal proceedings.

Here, Petitioner does not challenge DHS's decision to commence removal proceedings or to exercise its discretion to detain. Rather, he challenges the statutory and constitutional authority under which that detention was classified—specifically, DHS's unlawful designation of his custody as arising under INA § 235(b) instead of § 236(a). This misclassification deprived him of the bond hearing Congress mandated for interior arrests. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the Ninth Circuit in *Gonzalez v. ICE*, 975 F.3d 788 (9th

Cir. 2020), both made clear that § 1252(b)(9) does not bar such claims, because they "challenge the statutory or constitutional basis of detention rather than the decision to remove."

Labeling such a claim "creative" does not transform a collateral statutory challenge into a request for review of a removal order. *Jennings* explicitly cautioned that § 1252(b)(9) cannot be read so broadly as to encompass every dispute "in any way connected to deportation proceedings." *Id.* at 293. Because this petition contests the authority under which DHS asserts custody, not the validity of any removal order or charging decision, it remains properly before this Court.

Other judges within the Southern District of California have reached the same conclusion. In *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025), and *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025), the courts held that § 1252(b)(9) does not bar habeas jurisdiction over collateral challenges to DHS's custody classification under § 235(b). These rulings confirm that claims challenging only the statutory basis of detention—like Petitioner's—are properly subject to habeas review.

Finally, even the *Chavez v. Noem* decision on which Respondents rely supports this conclusion. The *Chavez* court expressly recognized that custody under § 1225(b)(2) "may occur during—but remains independent of—the removal proceedings," confirming that § 1252(b)(9) poses no jurisdictional bar to collateral statutory challenges such as this one.

Accordingly, § 1252(b)(9) does not deprive this Court of jurisdiction to review this habeas petition, which presents a collateral statutory and constitutional challenge to DHS's unlawful custody classification—not to the initiation or conduct of removal proceedings.

B. 8 U.S.C. § 1252(g): Does Not Apply to DHS's Misclassification of Custody

Respondents further contend that § 1252(g) deprives this Court of jurisdiction because Petitioner's detention "stems from ICE's decision to commence removal proceedings." That contention misstates both the scope of § 1252(g) and the nature of Petitioner's claim.

In *Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 482 (1999), the Supreme Court held that § 1252(g) applies only to three discrete actions the Attorney General may take—commencing proceedings, adjudicating cases, or executing removal orders—and does not extend to "the many other decisions or actions that may be part of the deportation process." The Court expressly rejected interpreting § 1252(g) as a blanket jurisdictional bar over all claims tangentially related to removal.

Here, Petitioner does not challenge DHS's decision to initiate removal proceedings, nor any action to adjudicate or execute a removal order. Rather, he challenges DHS's misapplication of detention authority—specifically, its decision to classify him under INA § 235(b) instead of § 236(a). That statutory misclassification is a collateral issue wholly independent of any discretionary enforcement decision and goes to the legal basis for custody itself.

Courts have consistently held that § 1252(g) does not bar review of such collateral statutory or constitutional challenges to detention authority. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (holding that § 1252(g) does not preclude habeas review of statutory detention claims); *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025); and *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025) (both reaffirming that habeas review remains available to contest DHS's misclassification of custody under § 235(b)).

As the court likewise recognized in *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025), § 1252(g) does not bar judicial review where the challenge arises not from the decision to commence or prosecute removal proceedings, but from DHS's antecedent legal error in applying the wrong statutory detention framework.

Accordingly, § 1252(g) does not divest this Court of jurisdiction to review Petitioner's claim, which challenges DHS's unlawful custody classification—not any discretionary enforcement decision.

EXHAUSTION

Respondents argue that Petitioner failed to exhaust administrative remedies. That contention is misplaced. Petitioner did, in fact, obtain a full custody redetermination hearing before an Immigration Judge. On August 27, 2025, Immigration Judge Eugene H. Robinson Jr. (Otay Mesa Immigration Court) issued a written memorandum finding that Petitioner was detained under INA § 236(a)—not § 235(b)—and granted release on a $1,500 bond. (See ECF No. 1-1, Ex. 1, IJ Bond Memorandum, dated Aug. 27, 2025.)

The Immigration Judge explicitly rejected DHS's argument that Petitioner was an "applicant for admission" under § 235(b)(2), reasoning that Petitioner was arrested pursuant to a warrant in the interior after residing in the United States for years, and therefore did not fall within the scope of *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

Following that decision, DHS filed a Form EOIR-43, Notice of Intent to Appeal, which automatically stayed the bond order under 8 C.F.R. § 1003.19(i)(2).

Respondents' reliance on exhaustion cases such as *Castro–Cortez v. INS*, 239 F.3d 1037 (9th Cir. 2001), and *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011), is misplaced, as those decisions concern statutory exhaustion in direct petitions for review of removal orders. This habeas petition instead arises under 28 U.S.C. § 2241 and challenges only the statutory basis of custody. Under *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017), prudential exhaustion is excused when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." (quoting *Laing v. Ashcroft,* 370 F.3d 994, 1000 (9th Cir. 2004)).

Because the Immigration Judge already determined that custody arises under § 236(a), and DHS's appeal is now before the very agency that adopted the contrary rule in *Yajure-Hurtado*, exhaustion is both satisfied and excused. Further administrative review would serve no purpose other than delay.

The controlling Ninth Circuit authority is *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017), which holds that exhaustion is prudential and may be waived when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That is precisely the situation here: the Immigration Judge's decision and DHS's automatic appeal—pending before the very body that decided *Yajure-Hurtado*—confirm that further administrative review would be futile.

ARGUMENT

A. The Government Misreads INA §§ 235 and 236

Respondents incorrectly assert that Petitioner is subject to mandatory detention under INA § 235(b) because he is an "applicant for admission." That argument fails both legally and factually. Petitioner was apprehended within the interior of the United States, long after his entry and continuous residence; he was not encountered at a port of entry, during inspection, or near the international boundary.

The plain text of § 235(b)(2)(A) applies only when "an immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Courts have consistently held that "seeking admission" requires an affirmative act by the noncitizen—such as presenting at a port of entry for inspection or formally applying for admission or adjustment of status—and does not include individuals who, like Petitioner, have long resided in the country without taking any such step. See, e.g., *Mosqueda v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025).

Detention following an interior apprehension—long after entry—falls under § 236(a), not § 235(b). The Supreme Court has confirmed that § 236(a) governs custody of noncitizens already present in the United States, whereas § 235(b) applies only to those encountered during inspection or while seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018);

Matter of M-S-, 27 I&N Dec. 509 (BIA 2019). Treating interior arrestees as "applicants for admission" collapses the clear statutory distinction Congress deliberately preserved.

Courts within the Southern District of California have recently reaffirmed that boundary. In *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025), and *Valdovinos v. Noem*, the courts held that individuals arrested in the interior are properly detained under § 236(a), not § 235(b), emphasizing that § 235(b) applies only when the noncitizen takes an affirmative act to seek admission. That reasoning applies squarely here. Mr. Medina-Ortiz was apprehended in the interior of the United States after years of residence and took no affirmative act to seek admission. He therefore cannot lawfully be treated as an "applicant for admission."

Accordingly, DHS's reliance on § 235(b) to detain Petitioner is contrary to statute and due process. His custody is governed by § 236(a), entitling him to an individualized bond hearing before a neutral Immigration Judge.

B. DHS's Sudden Reinterpretation Contradicts Nearly Three Decades of Consistent Policy

For nearly three decades after Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the government uniformly applied INA § 235(b) detention authority only to arriving noncitizens or those apprehended immediately after crossing the border. Individuals arrested in the interior—often long after their entry—were consistently detained under INA § 236(a) and afforded bond eligibility. This settled practice spanned multiple administrations of both political parties and reflected the plain statutory distinction between "applicants for admission" encountered at or near the border and those already present in the United States.

Only in mid-2025 did DHS abruptly reverse that interpretation. Around July 8, 2025, a memorandum distributed to ICE field offices directed officers to classify all noncitizens who entered without inspection (EWIs) as "applicants for admission," regardless of the time, place, or circumstances of arrest. This unprecedented expansion of § 235(b) detention authority was later

endorsed in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), and operationalized through field guidance that was never subject to public rulemaking or notice-and-comment procedures.

This reinterpretation marks a sharp and unjustified break from nearly thirty years of consistent agency practice. As the courts in *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025), and *Chavez Valdovinos v. Noem*, No. 25-CV-2687 JLS (DDL) (S.D. Cal. Oct. 28, 2025), observed, DHS's recent reclassification of long-settled residents as "applicants for admission" conflicts with the statutory text, legislative history, and prior agency construction of the INA. Such a sudden and unexplained departure from established interpretation is entitled to little, if any, deference. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446 n.30 (1987) ("An agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is entitled to considerably less deference than a consistently held agency view.").

Because DHS's new position contradicts both the statutory structure and decades of uniform practice, its application to Petitioner's custody is arbitrary, capricious, and unlawful.

C. The *Chavez v. Noem* Order Did Not Resolve the Statutory Question Presented Here

Respondents cite *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sept. 24, 2025), apparently to suggest that the court's denial of a temporary restraining order supports their position that Petitioner's detention is properly governed by § 235(b). That reliance is misplaced. The *Chavez* order denied only temporary relief at the TRO stage and did not reach—let alone resolve—the underlying statutory question of whether DHS's detention authority arises under § 235(b) or § 236(a).

A denial of a temporary restraining order is neither a ruling on the merits nor a binding determination of law. See *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("The findings of fact and conclusions of law made by a court granting or denying a preliminary injunction are not binding at trial on the merits.").

By contrast, the court in *Ramiro Chavez Valdovinos v. Noem*, No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Hon. Todd W. Robinson), directly addressed the statutory question in a materially similar context. There, the court held that § 1252's jurisdictional provisions do not bar habeas review, that exhaustion was futile in light of *Yajure-Hurtado*, and that detention following an interior arrest is governed by § 236(a), not § 235(b). The court granted the petition in part and ordered an individualized bond hearing under § 236(a) within fourteen days, expressly directing that Respondents may not deny bond on the ground that § 235(b)(2) mandates detention.

Similarly, in *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Hon. Janis L. Sammartino), the court reaffirmed that noncitizens arrested in the interior are not "applicants for admission" under § 235(b) absent a positive act seeking entry, and therefore fall within the custody framework of § 236(a). That decision further recognized that DHS's recent reinterpretation of § 235(b) contravenes longstanding statutory and agency practice.

CONCLUSION

For the foregoing reasons, Petitioner's apprehension occurred within the interior of the United States—long after his entry—placing his custody within the framework of INA § 236(a), not § 235(b). DHS's subsequent designation of his custody under § 235(b)—a provision reserved for individuals encountered at or near the border—was contrary to law and deprived him of the bond hearing guaranteed under § 236(a).

This statutory misclassification, not the underlying arrest itself, forms the core of the present challenge. By invoking § 235(b), DHS denied Petitioner the statutory and constitutional protections Congress expressly afforded to individuals apprehended within the United States. His detention, if lawful at all, arises under § 236(a), which mandates an individualized bond hearing before a neutral Immigration Judge.

This petition presents a collateral challenge to the legal basis of custody—not to DHS's discretionary decision to initiate or pursue removal proceedings. Accordingly, this Court retains

jurisdiction under 28 U.S.C. § 2241, as recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and in multiple recent decisions within this District, including *Esquivel-Ipina v. Noem*, No. 25-CV-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025), and *Chavez Valdovinos v. Noem*, No. 25-CV-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025). Exhaustion is prudential, not jurisdictional, and is excused where, as here, administrative remedies are futile in light of *Yajure-Hurtado*.

For these reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus, lift the automatic stay of the Immigration Judge's prior bond order, and permit Petitioner to post the $1,500 bond previously set. In the alternative, Petitioner requests that the Court declare DHS's classification of his custody under § 235(b) unlawful, hold that he is detained under § 236(a), and direct DHS to provide a new individualized bond hearing under § 236(a) before a neutral Immigration Judge, consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

Respectfully submitted,

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